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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/574,271

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EXAMINER

PROPSTER, DANIEL M

ART UNIT

PAPER NUMBER

1782

MAIL DATE

DELIVERY MODE

09/16/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/574,271	Applicant(s) GILLESSEN ET AL.	
	Examiner Daniel M. Propster	Art Unit 1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 8-15 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 16-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>31 March, 2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I: Claims 1-7, and 16-17, drawn to a feed composition in the reply filed on August 23, 2010 is acknowledged.

Claims 8-15 and 18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 23, 2010.

Claim Rejections - 35 USC § 112 Second Paragraph

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is indefinite because it does not explain how the feed composition relates to the feed or to what component of the feed has the aromatic ring described. For purposes of examination, the examiner assumed the ring was part of the IAA or an IAA derivative making up part of the IAA content of the feed. Please modify the claim language to make it clear whether this ring is present on all or a portion (and what specific portion) of the molecules of IAA and IAA derivatives present in the claimed feed composition.

Claim Rejections - 35 USC § 102(b)

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaemmerer (U.S. Patent No. 2,925,341).

For the purposes of claim interpretation in this office action, the broadest member of the Markush group of claim 1: "a compound that can be converted into free IAA in one or more steps" is being interpreted as being any form of indole acetic acid or its derivatives.

Regarding claims 1 and 2, Kaemmerer discloses an animal feed composition containing 0.001 beta-indole acetic acid (a synonym for indole acetic acid) (col. 2, lines 20-44). The 0.001% indole acetic acid is 0.01 g / kg or 10,000 mcg / kg, which is greater than 240 mcg / kg and less than 40 g as presently claimed.

Regarding claim 7, Kaemmerer discloses administering a feed with an effective amount of IAA to improve feed efficiency and feed conversion rate (col. 2, lines 54-70).

Claim Rejections - 35 USC § 103(a)

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 103(a) that form the basis for the rejections under this section made in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 5-6 and 16 are rejected under 35 USC § 103(a) as being unpatentable over Kaemmerer (U.S. Patent No. 2,925,341) in view of Hsieh et al. (U.S. Patent Pub. No. 2003/0195244).

Regarding claim 3, the disclosure of Kaemmerer is discussed above.

Kaemmerer does not explicitly disclose using between 100 and 1000 mg / kg of IAA.

However, Hsieh et al. discloses that an effective amount of indole compounds to be taken orally (or otherwise) is from about 0.1 mg/kg to about 1000 mg/kg (para. 0107).

When the claimed ranges overlap or lie inside ranges disclosed by the prior art a prima facie case of obviousness exists (MPEP § 2144.05).

At the time of invention, it would have been obvious to a person having ordinary skill in the art to modify Kaemmerer at least about 0.1 mg/kg to about 1000 mg/kg, in order to ensure an effective amount of IAA is present in the feed.

Regarding claim 5, the disclosure of Kaemmerer and Hsieh et al. are discussed above. Kaemmerer does not explicitly disclose having the IAA or IAA derivative having an aromatic ring substituted on one or more of the 4, 5, 6, 7 positions with methyl, amino, nitro, fluoride, chloride, bromide or iodide. However, Hsieh et al. discloses indole derivatives used to treat cancer and disease symptom such as targeting the microtubule system (tubulin polymerization/ depolymerization) or others using indole compounds (para. 0005-0006). The compounds disclosed have having an aromatic ring

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substituted on one or more of the 4, 5, 6, 7 positions with nitro or CH₃ (methyl) or a halogen (fluoride, chloride, bromide or iodide) (para. 0007-0009).

At the time of invention, it would have been obvious to a person having ordinary skill in the art to modify Kaemmerer to include IAA derivatives that having an aromatic ring substituted with one or more of the 4, 5, 6, 7 positions with methyl, amino, nitro, fluoride, chloride, bromide or iodide, in order to help treat symptoms of diseases and cancer in the animals being fed (para. 0002-0006 and 0100).

Regarding claim 6, Kaemmerer does not explicitly disclose having the feed composition in at least one of pellet, meal, grains, extruded or expanded grains, tablets, powder and bolus form. However, Hsieh et al. discloses that the IAA derivative can be given in a tablet form (para. 0113). In addition, a person having ordinary skill in the art would know that animals feeds are often formed into pellet, meal, grains, extruded or expanded grains, tablets, powder and bolus form.

Regarding claim 16, the disclosure of Kaemmerer in view of Hsieh et al. is discussed above. Applicant's disclosure indicates that 12.5 mg/kg was an effective amount to increase serum levels of insulin-like growth factor in piglets (IGF-1). As discussed above, Kaemmerer in view of Hsieh et al. discloses that using from about 0.1 mg/kg to about 1000 mg/kg of IAA or modified IAA (indoles) (Hsieh et al., para. 0107).

Claims 4 and 17 are rejected under 35 USC § 103(a) as being unpatentable over Kaemmerer (U.S. Patent No. 2,925,341) in view of Christensen et al. (Swedish Patent No. SE 8200724).

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Regarding claims 4 and 17, the disclosure of Kaemmerer is discussed above. Kaemmerer does not explicitly disclose using enzymes. However, Christensen et al. discloses treating food with naturally occur glucosidase to increase maltose content and reduce bulk (abstract).

At the time of invention, it would have been obvious to a person having ordinary skill in the art to modify Kaemmerer to include enzymes such as glucosidase in order to reduce bulk (and depending on ingredients, increase maltose content).

Conclusion

All claims are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel M. Propster whose telephone number is (571)270-5990. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. M. P./
Examiner, Art Unit 1782

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1782